



WILTSHIRE
& GRANNIS LLP

REDACTED FOR PUBLIC INSPECTION

May 9, 2013

VIA ECFS

Marlene Dortch
Secretary
Federal Communications Commission
445 12th St., S.W.
Washington, DC 20554

**Re: Cisco WebEx, LLC, Request for Review of a Decision by the
Universal Service Administrator, WCB Docket No. 06-122**

Dear Ms. Dortch:

To assist commenters in the above-captioned proceeding, Cisco WebEx, LLC hereby files a redacted version of Exhibit A to its Request for Review of a Decision of the Universal Service Administrator Company, dated April 8, 2013. WebEx respectfully renews its request for confidential treatment with respect all information redacted in the attached.¹

Should you have any questions regarding the foregoing, please contact the undersigned at (202) 730-1346.

Sincerely,

A handwritten signature in black ink, appearing to read 'BD Strandberg', with a long horizontal line extending to the right.

Brita D. Strandberg
Counsel to Cisco WebEx LLC

cc: Julie Veach

¹ See WebEx LLC Request for Review of Decision of the Universal Service Administrator, Request for Confidential Treatment, WC Docket No. 06-122 (filed Apr. 8, 2013).

EXHIBIT A

**CISCO WEBEX LLC REQUEST FOR REVIEW OF DECISION BY UNIVERSAL
SERVICE ADMINISTRATOR
APRIL 8, 2013**

REDACTED FOR PUBLIC INSPECTION



To: David Case, Vice President and Chief Financial Officer

From: Wayne Scott, Vice President of Internal Audit

Date: November 9, 2012

**Re: USAC Internal Audit Division Report on the Audit of Cisco WebEx LLC –
2010 FCC Form 499-A Rules Compliance (USAC Audit No. CR2011CP0016)**

Introduction

The Universal Service Administrative Company (USAC or Administrator) Internal Audit Division (IAD) audited the compliance of Cisco WebEx LLC, Filer Identification Number 826750, (the Carrier) in completing its 2010 Telecommunications Reporting Worksheet, FCC Form 499-A, using Federal Communications Commission (FCC or Commission) rules, orders and the 2010 FCC Form 499-A Instructions. The applicable rules, orders and instructions are set forth primarily in 47 C.F.R. Part 54, as well as in other FCC rules, FCC orders, and the 2010 FCC Form 499-A Instructions (collectively, the Rules). Compliance with the Rules is the responsibility of the Carrier. IAD's responsibility is to make a determination regarding the Carrier's compliance with the Rules based on the audit.¹

IAD conducted the audit in accordance with Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States (2007 revision, as amended).² Those standards require that IAD plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for its findings and conclusions based on the audit objectives. The audit included examining, on a test basis, evidence supporting the data used to calculate the Carrier's Universal Service Fund (USF) reporting and contribution obligations, as well as performing such other procedures as IAD considered necessary to make a determination regarding the Carrier's

¹ *In the Matter of Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight, et al.*, WC Docket Nos. 05-195, 02-60, 03-109, CC Docket Nos. 96-45, 02-6, 97-21, Report and Order, FCC 07-150, 22 FCC Rcd 16372, 16382, ¶ 19 (2007) ("Audits are a tool for the Commission and the Administrator, as directed by the Commission, to ensure program integrity and to detect and deter waste, fraud, and abuse. Audits can reveal violations of the Act or the Commission's rules. Commission rules authorize the Administrator to conduct audits of contributors to the universal service support mechanisms.").

² 47 C.F.R. § 54.702(n) ("When the Administrator, or any independent auditor hired by the Administrator, conducts audits of the beneficiaries of the Universal Service Fund, contributors to the Universal Service Fund, or any other providers of services under the universal service support mechanisms, such audits shall be conducted in accordance with generally accepted government auditing standards.").

compliance with the Rules. The evidence obtained provides a reasonable basis for IAD's findings and conclusions based on the audit objectives.

Purpose, Scope and Procedures

The primary objective of the audit was to determine the accuracy and completeness of the revenues reported by the Carrier on its 2010 FCC Form 499-A and to identify any potential misstatements that may result in a change to the Carrier's USF reporting and contribution obligations for the period audited. IAD reviewed the Carrier's 2010 FCC Form 499-A (covering the period January 1, 2009 through December 31, 2009) and performed procedures to determine whether the Carrier was compliant with the Rules.

IAD conducted audit procedures to determine whether the Carrier correctly reported revenues from all sources on its 2010 FCC Form 499-A by performing a reconciliation of the total revenues reported on the 2010 FCC Form 499-A compared to the Carrier's trial balance. IAD also evaluated the classification of the Carrier's revenue accounts on the different 2010 FCC Form 499-A line items for all products by reviewing descriptions of the Carrier's product offerings.

The Rules also require the Carrier to classify its revenues on the FCC Form 499-A as intrastate, interstate, and/or international through the use of good faith estimates, safe harbor percentages, or actual revenue amounts. IAD obtained supporting documentation for the Carrier's classification methods of these percentages or amounts to ascertain whether the Carrier was compliant with the Rules.

IAD also tested customer invoices to determine whether the Carrier was compliant with the Rules as they relate to USF recovery charges on end-user customer invoices.

Background

The Carrier operates as a toll reseller and audio bridging provider. During the period under audit, the Carrier's products included audio bridging minutes and a web-based desktop and document sharing application used by its customers to conduct online collaboration meetings. The Carrier reported the following revenues on its 2010 FCC Form 499-A as subject to USF contribution assessment:

	Cisco WebEx LLC's 2010 FCC Form 499-A	
Interstate Revenue		
International Revenue		
Total		

Following are a summary conclusion and brief statement of the audit findings as determined by IAD. Detailed discussions of the audit findings are attached to this executive summary.

Conclusion

IAD concludes that the Carrier was not compliant with the applicable Rules for the period reviewed. The audit produced two findings as described in detail in the attachments to this executive summary.

For the purpose of this report, an audit finding (Finding) is a condition that shows evidence of non-compliance with the Rules that were in effect during the audit period. Following is a summary of the Findings.

Audit Findings – Summary

Finding #	Finding	Finding Description	Estimated USF Contribution Base Effect
1		Carrier did not report the correct telecommunications revenue amounts on the appropriate lines of the 2010 FCC Form 499-A.	
2			
		Total	

Monetary Effect

As a result of the audit findings, the estimated effect on the contribution base is an increase of [REDACTED] for the period audited. Based on this amount, the Carrier's additional USF contribution obligation is [REDACTED] for the period audited.

Post-Audit Activities

Once deemed final by the USAC Board of Directors, the audit report will be provided to the Carrier. Shortly thereafter, USAC Financial Operations will notify the Carrier that it has 60 days to submit a properly certified revised 2010 FCC Form 499-A for the period audited that is consistent with the findings in the audit report. In the event the Carrier

does not submit a revised 2010 FCC Form 499-A, USAC Financial Operations will prepare a 2010 FCC Form 499-A for the Carrier based on the audit findings and will begin invoicing the Carrier for the additional USF contribution amounts owed.

The Carrier will have 60 days from the date the final audit report is sent to the Carrier to appeal the decisions of the Administrator reflected in this audit report to the FCC pursuant to 47 C.F.R. Part 54, Subpart I.

Cisco WebEx LLC
Filing Year 2010
Detailed Audit Finding #1
Reporting Period, Products, and Jurisdiction

Criteria

FCC Rules state:

1. “‘Telecommunications’ is the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.” 47 C.F.R. § 54.5.
2. “‘Information service’ is the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.” *Id.*
3. “Any entity required to contribute to the federal universal service support mechanisms shall retain, for at least five years from the date of the contribution, all records that may be required to demonstrate to auditors that the contributions made were in compliance with the Commission’s universal service rules.” 47 C.F.R. § 54.706(e).

The *InterCall Order* states:

4. “Similarly, the other features offered in conjunction with InterCall's conferencing service, such as muting, recording, erasing, and accessing operator services, do not alter the fundamental character of InterCall's telecommunications offering so that the entire offering becomes an information service. Consistent with the decision in the *Prepaid Calling Card Order*, these separate capabilities are part of a package in which the customer can still conduct its conference call with or without accessing these features. These features, therefore, are not sufficiently integrated into the offering to convert the offering into an information service. For these reasons, we find that, in providing [its] audio bridging service, InterCall is providing telecommunications, and the service is not an information service.” *In the Matter of Request for Review by InterCall, Inc. of Decision of Universal Service Administrator*, CC Docket No. 96-45, Order, FCC 08-160, 23 FCC Rcd 10731, 10735, ¶ 13 (2008) (*InterCall Order*).
5. “We find that the service described by InterCall is telecommunications. As the Commission has recognized, ‘the heart of ‘telecommunications’ is transmission.’ InterCall’s service allows end users to transmit a call

(using telephone lines), to a point specified by the user (the conference bridge), without change in the form or content of the information as sent and received (voice transmission). The existence of a bridge that users dial into does not alter this classification. Rather, the purpose and function of the bridge is simply to facilitate the routing of ordinary telephone calls.” *Id.* at 10734-10735, ¶ 11.

The *Fourth Order on Reconsideration* states:

6. “The issue is whether, functionally, the consumer is receiving two separate and distinct services....To the extent that a provider is offering basic voice-grade interstate telephone service and is not otherwise exempt, it is required to contribute to universal service.” *In the Matter of Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review and Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration and Report and Order, FCC 97-420, 13 FCC Rcd 2372, ¶ 282 (1997).

The *Prepaid Calling Card Order* states:

7. “[M]erely packaging two services together does not create a single integrated service.” *In the Matter of Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling and Report and Order, FCC 06-79, 21 FCC Rcd 7290, 7295, ¶ 14 (2006).

The *USF Comprehensive Review Order* states:

8. “*Contributors*. We also require contributors to the USF to retain all documents and records that they may require to demonstrate to auditors that their contributions were made in compliance with the program rules, assuming that the audits are conducted within five years of such contribution. We clarify that contributors must make available all documents and records that pertain to them, including those of contractors and consultants working on their behalf, to the Commission’s OIG, to the USF Administrator, and to their auditors. These documents and records should include without limitation the following: financial statements and supporting documentation; accounting records; historical customer records; general ledgers; and any other relevant documentation.” *In the Matter of Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Link-Up, Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 02-6, 97-21, WC Docket Nos.

05-195, 02-60, 03-109, Report and Order, FCC 07-150, 22 FCC Rcd 16372, 16385, ¶ 27 (2007).

The *Cable Modem Order* states:

9. “Consistent with the statutory definition of information service, cable modem service provides the capabilities described...‘via telecommunications.’ That telecommunications component is not, however, separable from the data-processing capabilities of the service. As provided to the end user the telecommunications is part and parcel of cable modem service and is integral to its other capabilities.” *In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, Internet Over Cable Declaratory Ruling, Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, GN Docket No. 00-185, CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 02-77, 17 FCC Rcd 4798, 4823, ¶ 39 (2002).

The Instructions to the 2010 FCC Form 499-A (Instructions) state:

10. “Filers shall maintain records and documentation to justify information reported in the Telecommunications Reporting Worksheet, including the methodology used to determine projections and to allocate interstate revenues, for five years. Additionally, filers must make available all documents and records that pertain to them, including those of contractors and consultants working on their behalf, to the Commission’s Office of Inspector General, to the USF Administrator, and to their auditors upon request.” 2010 FCC Form 499-A Instructions, § II.F at 12, ¶ 3.
11. “Report revenues for calendar year 2009.” 2010 FCC Form 499-A Instructions, § III.C at 18, ¶ 4.
12. “...Line 417 should include toll teleconferencing.” 2010 FCC Form 499-A Instructions, § III.C.4 at 29, ¶ 1.
13. “Audio bridging service providers should report all audio bridging revenues...as telecommunications service revenues.” 2010 FCC Form 499-A Instructions, § III.C.4 at 29, n.47 (citing *Request for Review by InterCall*, 23 FCC Rcd at 10734, 10739, ¶¶ 8, 25-26; *Audio Bridging Service Providers to begin Filing FCC Form 499-Q on August 1, 2008*, CC Docket No. 96-45, Public Notice, 23 FCC Rcd 11043 (2008)).
14. “Line 418 -- Other revenues that should not be reported in the contribution bases. Line 418 should include all non-telecommunications service revenues on the reporting entity's books, as well as some revenues that are derived from telecommunications-related functions, but that should not be

included in the universal service or other fund contribution bases. For example, information services offering a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications are not included in the universal service or other fund contribution bases....These services are exempt from contribution requirements and should be reported on Line 418....Line 418 should include revenues from telecommunications services provided in a foreign country where the traffic does not transit the United States or where the carrier is providing service as a foreign carrier, *i.e.* a carrier licensed in that country.” 2010 FCC Form 499-A Instructions, § III.C.4 at 29, ¶ 3.

15. “Columns (b), (c), (d), and (e) are provided to identify the part of gross revenues that arise from interstate and international services for each entry on Lines 303 through 314 and Lines 403 through 417. Intrastate telecommunications means communications or transmission between points within the same State, Territory, or possession of the United States, or the District of Columbia. Interstate and international telecommunications means communications or transmission between a point in one state, territory, possession of the United States or the District of Columbia and a point outside that state, territory, possession of the United States or the District of Columbia.” 2010 FCC Form 499-A Instructions, § III.C.3 at 21, ¶ 6.
16. “Gross revenues consist of total revenues billed to customers during the filing period....” 2010 FCC Form 499-A Instructions, § III.C.2 at 20, ¶ 1.
17. “If revenue category breakout cannot be determined directly from corporate books of account or subsidiary records, filers may provide on the Worksheet a good-faith estimate of the breakout.” 2010 FCC Form 499-A Instructions, § III.C.2 at 20, ¶ 5.

Condition

[REDACTED]

The Telecommunications and Non-Telecommunications Revenue Reporting section below provides an overview of the WebEx product, discusses the Carrier’s and IAD’s characterizations of the WebEx platform collaboration service, and discusses the classification by the Carrier and the re-classification by IAD of the Carrier’s WebEx platform collaboration service revenues based on the Carrier’s and IAD’s respective characterizations of the product.

[REDACTED]

[REDACTED] In sum, because the Carrier did not properly classify its products as telecommunications and non-telecommunications on its 2010 FCC Form 499-A, the Carrier understated its assessable U.S. telecommunications revenue by [REDACTED] on the form.

[REDACTED]

[REDACTED]

Telecommunications and Non-Telecommunications Revenue Reporting

The subsections immediately below contain a detailed discussion of the characterization, classification, and reclassification of the Carrier's WebEx platform collaboration service revenues. The WebEx Product subsection gives a factual overview of the features and capabilities provided by the Carrier's WebEx platform collaboration service. The Carrier Characterization of WebEx Services subsection describes the Carrier's characterization of its WebEx service based on the Carrier's understanding of the Rules. The IAD Characterization of WebEx Services subsection discusses IAD's application of the Rules to the Carrier's WebEx service. The Carrier Classification of Revenue subsection describes the Carrier's classification of its WebEx platform collaboration service revenues as reported on the 2010 FCC Form 499-A based on the Carrier's characterization of its WebEx services. The IAD Classification of Revenue subsection discusses IAD's reclassification of the Carrier's WebEx platform collaboration service revenues based on IAD's application of the Rules to the Carrier's WebEx service.

[REDACTED]

WebEx Product

The Carrier states that “WebEx is an online collaboration service that permits users to meet online, share information and documents, edit and annotate documents, and communicate using audio (including [non-interconnected] VoIP, wireline or wireless connections), video and text.”⁴ Specifically, the Carrier states that its WebEx platform collaboration service enables meeting attendees to “share documents and desktops, make notes, edit and redline, make multi-media presentations, use whiteboarding, and stream integrated audio and video.”⁵ To participate in both the WebEx desktop and document sharing application and the WebEx audio bridging portions of a WebEx platform collaboration session, a user must first log into the Carrier’s website to access the WebEx desktop and document sharing application portion of the Carrier’s services.⁶ Then, the user accesses the WebEx audio bridging portion of the collaboration session using either the public switched telephone network (PSTN) (by calling a toll or toll free number or having the audio bridge call the user back through the PSTN) or through the Internet using non-interconnected VoIP from the user’s computer.⁷ Once the Carrier’s customer has created a collaboration session, the Carrier’s customer and the meeting participants use the WebEx desktop and document sharing application to run the meeting and to share, edit, and annotate documents and information.

IAD notes that separate from allowing customers to purchase access to the Carrier’s WebEx desktop and document sharing application, the Carrier allows customers to purchase audio minutes from the Carrier, if desired by the customer, as a part of a combined WebEx desktop and document sharing application and WebEx audio bridging package. For example, a customer may purchase 3,000 toll free audio minutes at a rate of \$225 per month. If the customer exceeds the purchased minutes, overage charges are billed to the customer at a per-minute rate set by the customer’s audio bridging plan. The Carrier bills its customers for the audio minutes separate from the charges the Carrier assesses its customers for access to the Carrier’s WebEx desktop and document sharing application.

Carrier Characterization of WebEx Services

The Carrier asserts that “WebEx qualifies as an integrated information service as defined by the Commission’s governing statute and its information service precedents.”⁸ The Carrier further asserts that “WebEx, like broadband Internet access, must be treated as an ‘integrated information service’ because it combines transmission with computer processing, information provision, and computer interactivity to enable users to run a variety of applications.”⁹ More specifically, regarding toll and toll free usage, the Carrier

⁴ See Letter from Brita Strandberg, counsel for Cisco WebEx LLC (WebEx), to David Capozzi, USAC Acting General Counsel, at 2 (Sept. 28, 2012) (*Sept. Letter*).

⁵ See Cisco WebEx LLC Response to Outstanding Requests at 1 (Oct. 24, 2011) (*WebEx Response*).

⁶ See WebEx Meeting Center User Guide (2010), Appendix C at 8 (Sept. 28, 2012) (*2010 User Guide*).

⁷ See *2010 User Guide* at 130-131. Users may also use any third-party teleconferencing service or internal teleconferencing system in conjunction with the WebEx desktop and document sharing application. *Id.* at 64.

⁸ See *Sept. Letter* at 2. See also, WebEx Response to USAC “Applicable Criteria” at 6-7 (July 20, 2012) (*Applicable Criteria*); *WebEx Response* at 2-4.

⁹ See *Sept. Letter* at 2. See also, *Applicable Criteria* at 1.

argues that “WebEx toll and toll free usage integrated capabilities go far beyond the mere audio controls (record, delete playback, mute and unmute) that the Commission found did not convert InterCall’s audio bridging service into an integrated information service.”¹⁰ The Carrier further alleges that “[u]nlike InterCall’s service, WebEx’s information service capabilities integrate simple audio communication into a rich computer-based video, audio and data sharing experience, and thus ‘alter the fundamental character’ of the service within the meaning of the Commission’s *InterCall Order* and [the WebEx platform collaboration service] thereby qualifies as an integrated information service.”¹¹

The Carrier states that “[a]ny reliance [by IAD] on the InterCall service’s capability to be used ‘with or without accessing’ audio controls to support a finding that WebEx qualifies as a telecommunications service contravenes existing FCC precedent and is outside USAC’s authority.”¹² The Carrier quotes the FCC’s *Cable Modem Order* for the proposition that a cable modem service is an integrated information service “*regardless of whether subscribers use* all of the functions provided as part of the service, such as e-mail or web-hosting, and regardless of whether every cable modem service provider offers each function that could be included in the service” and states that the WebEx platform collaboration service is more like cable modem service than an audio bridging service.¹³

In support of the Carrier’s argument that its WebEx platform collaboration service should be characterized as an integrated information service, the Carrier submitted documentation outlining key features of the WebEx platform collaboration service, as well as how the Carrier understood each feature satisfied the statutory definition of an information service.¹⁴ According to the Carrier, the information provided during the audit illustrates “WebEx’s tight integration of telecommunications and information service capabilities into a single information service.”¹⁵ IAD has reviewed all of the documentation provided by the Carrier, but does not concur with the Carrier’s statement that the Carrier’s WebEx platform collaboration service is an integrated information service such that the information services component of the service is inextricably intertwined with the audio bridging component of the service. IAD’s determination is discussed in greater detail in the IAD Characterization of WebEx Services and IAD Classification of Revenue sections below.

IAD Characterization of WebEx Services

As stated above “WebEx is an online collaboration service that permits users to meet online, share information and documents, edit and annotate documents, and communicate using audio (including [non-interconnected] VoIP, wireline or wireless connections), video and text.”¹⁶ In order to have a WebEx platform collaboration session, a customer may combine the Carrier’s WebEx desktop and document sharing application, which

¹⁰ See *Sept. Letter* at 4. See also, *Applicable Criteria* at 2.

¹¹ *Id.*

¹² See *Sept. Letter* at 4. See also, *Applicable Criteria* at 3.

¹³ *Id.*

¹⁴ See generally, *WebEx Response*; *Applicable Criteria*; *Sept. Letter* and attachments.

¹⁵ See *Sept. Letter* at 2.

¹⁶ *Id.*

enables the customer or participant to share, edit and annotate documents, with a separate audio bridging component. A customer or participant may choose how to use the audio bridging component of a WebEx platform collaboration session from multiple options. For example, the user may connect to the audio bridging portion of the session using non-interconnected VoIP through the user's Internet enabled device (*e.g.*, computer, tablet, or mobile phone), an audio bridge service provided by the Carrier, an audio bridge service provided by a third party teleconferencing provider, or an internal teleconferencing solution. The Carrier receives revenue from its customers for the customer's use of the Carrier's WebEx desktop and document sharing application, as well as revenue from customers that elect to use the Carrier's audio bridging service for the audio component of the WebEx platform collaboration service. Based on IAD's review of the Carrier's documentation, the receipt of these two types of revenue is distinct in that the Carrier prices and bills them separately. [REDACTED]

Pursuant to the Rules, IAD concurs that the Carrier's desktop and document sharing service is an information service as defined by the FCC because the Carrier's service provides the capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via an internet connection (*see* criterion 2). For example, the desktop and document sharing features enable customers to send messages to meeting participants, generate reports, download and transfer files, and white board during meetings.¹⁷ Thus, IAD does not seek to classify revenue from the Carrier's desktop and document sharing information service as assessable telecommunications revenue.

IAD has determined that revenues received by the Carrier for its toll and toll free audio bridging products are telecommunications revenues and are subject to federal universal service contribution obligations (*see* criteria 1, 4, 5 and 13). Specifically, IAD does not concur with the Carrier's statement that the desktop and document sharing component of its WebEx platform collaboration service is so tightly integrated with the audio bridging component of its WebEx platform collaboration service that the two services are functionally integrated as contemplated by the Rules.¹⁸ Rather, provided that a customer uses the PSTN to access the audio component of the Carrier's WebEx platform collaboration service, the Carrier transmits the call using telephone lines connected to the PSTN, to a point specified by the customer (the conference bridge), without change in the form or content of the transmission (*see* criterion 5), while the same customer uses the Internet to access the WebEx desktop and document sharing application portion of the Carrier's service. IAD notes, however, that when a customer accesses the audio component of the Carrier's WebEx platform collaboration service through the Internet using non-interconnected VoIP from the user's computer, IAD concurs that the Carrier is not providing a telecommunications service.

The Commission has stated that merely combining a telecommunications service with an enhanced service does not create a single integrated information service (*see* criterion 7).

¹⁷ *See 2010 User Guide* at 165, 295 and 405.

¹⁸ *See Sept. Letter* at 2 and 6. *See generally, Applicable Criteria.*

Rather the question is whether, functionally, the consumer is receiving two separate and distinct services (*see* criterion 6).¹⁹ In this case, the Carrier provided, and the customer received, two separate and distinct services. Namely, the customer received a desktop and document sharing application (*i.e.*, an information service) and an audio bridging product (*i.e.*, a telecommunications service). As described above, a customer may use the Carrier's desktop and document sharing application with audio bridging, non-interconnected VoIP, a third party audio bridging service, or an internal conferencing service to create a WebEx platform collaboration meeting. The ability of a customer to combine the information service portion of the Carrier's WebEx platform collaboration service with a variety of different audio options demonstrates that the telecommunications component is separable from the information component and that the Carrier provides a distinct audio bridging product that is not inextricably intertwined with its information service product such that the customer always uses them as a unitary service (*see* criteria 1, 4, 6, 7 and 9). Moreover, even though the host (*i.e.*, the Carrier's customer) of a WebEx platform collaboration session must use the WebEx desktop and document sharing application to schedule a WebEx platform collaboration meeting, if the host has selected WebEx audio bridging minutes for use during the WebEx collaboration session, participants receive an email invitation that includes both a link to the WebEx desktop and document sharing application and WebEx audio bridging call-in information.²⁰ Therefore, it is possible for meeting participants to use only the audio bridging portion of the WebEx platform collaboration service, without using the WebEx desktop and document sharing application. Further, the additional desktop and document sharing features that a customer can access when the customer also uses the Carrier's audio bridging service, such as muting, recording, erasing, access to a graphical interface that lists names of each speaker and indicates when each speaker is speaking, recording capabilities, and meeting controls do not alter the fundamental character of the voice transmission for the Carrier's audio bridging service such that it is transformed into an enhanced, or information, service (*see* criteria 1, 4, 5, 7 and 9).

As previously discussed, regardless of how a customer or participant uses the desktop and document sharing features of the WebEx platform collaboration service, the customer or participant is making an ordinary phone call (*i.e.*, the voice transmission is not altered) when using the audio component of the Carrier's service (*see* criteria 4 and 5). Functions such as "active talker," which brings up the video image of the meeting participant who is speaking,²¹ is a feature of the Carrier's WebEx desktop and document sharing application and is a feature that a customer receives when the customer purchases the Carrier's WebEx desktop and document sharing product, not when it purchases the audio portion of the Carrier's WebEx platform collaboration service. Moreover, the Carrier's "active talker" feature only identifies the person who is speaking; it in no way alters the ordinary

¹⁹ *See also, In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, 1998 Biennial Regulatory Review – Review of Customer Premises Equipment And Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets*, CC Docket Nos. 96-61, 98-183, Report and Order, FCC 01-98, 16 FCC Rcd 7418, ¶ 47, n.146 (2001) (citing and quoting the FCC's *Fourth Order on Reconsideration*) (*CPE Unbundling Order*).

²⁰ *See 2010 User Guide* at 68.

²¹ *See Sept. Letter*, Appendix A at 1.

voice transmission of the customer or participant (*see* criteria 4 and 5). Further, in the *InterCall Order*, the Commission considered many of the same features provided by the Carrier.²² For example, the Commission considered the ability to poll participants, the ability to obtain a roll-call of participants, the ability to mute and unmute lines and the ability to lock or unlock the conference from additional participants.²³ However, the FCC rejected InterCall's assertion that the availability of these features fundamentally altered the nature of InterCall's audio bridging service such that the audio bridging service became functionally integrated with the information service portion of the product (*see* criterion 4). Thus, pursuant to the Rules, IAD determined that the information services provided by the Carrier are not inextricably intertwined with its audio bridging service and do not fundamentally alter the audio transmission portion of its service such that the desktop and document sharing application and audio bridging portion of the WebEx platform collaboration service are transformed into a single integrated information service (*see* criteria 1, 4, 5, 6, 7, 9, 12 and 13).

Carrier Classification of Revenue

[REDACTED]

Specifically, the Carrier treated only a portion of the revenue from the audio component of its WebEx platform collaboration service as telecommunications. As a result of the Carrier's characterization of the audio portion of its revenues, the Carrier classified its revenues on the 2010 FCC Form 499-A as described below.

[REDACTED]

When reporting its telecommunications revenues, [REDACTED] the Carrier reported only the portion of revenue attributable to audio only minutes (AUO) as telecommunications on Line 417 of the 2010 FCC Form 499-A. The Carrier described AUO as "sessions initiated by telephone."²⁴ AUO consist of join before meeting (JBM) minutes and personal audio minutes. JBM minutes are incurred when attendees that participate in an audio conference meeting call-in using the telephone before the host starts the meeting. Personal audio minutes are incurred when a meeting is scheduled through the Carrier's "Personal Conferencing" service rather than through the Carrier's desktop and document sharing application. These personal audio meetings are initiated via telephone.²⁵ The Carrier stated that the AUO telephone usage "...captures all telephone only usage as well

²² *In the Matter of InterCall, Inc. Appeal of Decision of the Universal Service Administrative Company and Request for Waiver*, CC Docket No. 96-45, at 4 (filed Feb. 1, 2008) (stating that InterCall's audio bridge "performs conference validation functions, collects billing and participant information for each bridged call and enables numerous conference control features, including recording, delayed playback, mute and unmute of callers and operator assistance") (*InterCall Appeal*).

²³ *Id.* at 5.

²⁴ *See* Cisco WebEx LLC Audit Response, Exhibit B: Form 499-A Questionnaire at 3 (Aug. 15, 2011) (*WebEx Questionnaire Responses*).

²⁵ *See* *WebEx Response* at 5.

as those collaboration sessions that are initiated by telephone.”²⁶ According to the Carrier, because the Carrier’s systems “do not permit [it] to distinguish telephone-only sessions from collaboration sessions initiated by telephone[,] [t]he AUO telephony usage category is therefore overinclusive, capturing some information service revenue along with telecommunications service revenue.”²⁷ The Carrier considered all other telephony minutes of use (typically minutes of use incurred by users calling-in to a meeting after the host has started an online collaboration session) to be integrated with the Carrier’s desktop and document sharing application as a single information service and, therefore, did not include revenue from these telephony minutes of use with the telecommunications revenues reported on the form.

IAD reviewed the methodology used by the Carrier to report the telecommunications revenues on the Carrier’s 2010 FCC Form 499-A and determined that the Carrier’s methodology was not compliant with the Rules (*see* criteria 1, 4, 5, 6, 7, 12 and 13). Specifically, the Carrier did not report all audio bridging revenues as telecommunications on the 2010 FCC Form 499-A. Rather, it reported only the portion of audio revenues attributable to audio only minutes (AUO) as telecommunications. Because the Carrier’s methodology did not treat as telecommunications all of the Carrier’s audio bridging revenues, *i.e.*, the portion of the Carrier’s audio bridging revenues earned when customers use both the Carrier’s WebEx desktop and document sharing application and its audio bridging services at the same time (*see* criteria 1, 4, 5, 6, 7, 12 and 13), the revenue amounts reported on Lines 417 and 418.3 of the Carrier’s 2010 FCC Form 499-A were incorrect.

The Carrier provided an alternate methodology in the event that IAD determined that the Carrier’s initial methodology was not compliant with the Rules. Specifically, the Carrier proposed applying market rates, rather than gross billed rates, to the Carrier’s audio bridging minutes sold to customers.²⁸ Because the revenue category breakout between the Carrier’s revenues from its audio bridging service and from its desktop and document sharing application can be determined directly from the Carrier’s corporate books of account and because the Instructions require the reporting of all audio bridging revenues billed to customers during the filing period as telecommunications revenues, IAD determined that the Carrier’s proposed alternate methodology was not compliant with the Rules (*see* criteria 12, 13, 16 and 17).

IAD Classification of Revenue

Because IAD determined that both of the Carrier’s methodologies (the Carrier’s original methodology used to report its revenues on the 2010 FCC Form 499-A and the alternate market rate-based methodology) for identifying and reporting its calendar year 2009 U.S. telecommunications revenue were not compliant with the Rules, IAD developed a methodology consistent with the Rules to estimate the U.S. telecommunications portion of the Carrier’s revenue. Specifically, IAD’s methodology identified all revenues from the Carrier’s audio bridging service billed to customers and classified them as

²⁶ *See WebEx Questionnaire Responses* at 3.

²⁷ *Id.*

²⁸ *See* WebEx August 15, 2012 Audit Response at 3-4.

telecommunications services revenues (*see* criteria 1, 4, 5, 6, 12 and 13). In addition, IAD's methodology identified all revenues associated with the Carrier's desktop and document sharing application and classified them as information services revenues (*see* criteria 2 and 14).

[REDACTED]

[REDACTED]

[REDACTED]

Using the Carrier's revenue information [REDACTED] IAD separated the revenue from the Carrier's two total revenue classifications (U.S. revenues and foreign revenues) into six sub-classifications [REDACTED] U.S. telecommunications, foreign telecommunications, U.S. non-telecommunications, foreign non-telecommunications, U.S. undetermined, and foreign undetermined. IAD analyzed the Carrier's total calendar year 2009 revenues and concluded that [REDACTED] was U.S. telecommunications revenue, [REDACTED] was U.S. non-telecommunications revenue, [REDACTED] was foreign telecommunications revenue, and [REDACTED] was foreign non-telecommunications revenue. In addition,

IAD identified [REDACTED] of the Carrier's total revenue [REDACTED] consisting of [REDACTED] of U.S revenue and [REDACTED] of foreign revenue.

IAD requested, and the Carrier provided, additional information regarding the [REDACTED] of U.S. and [REDACTED] of foreign revenue [REDACTED]. IAD allocated the revenue [REDACTED] based on the information provided by the Carrier and IAD's analysis of the Carrier's revenue classifications.

IAD determined that of the [REDACTED] of U.S. revenue not associated with a SKU, [REDACTED] 4 was U.S. telecommunications revenue and [REDACTED] was U.S. non-telecommunications revenue.

Using the calculations described above, IAD determined that the Carrier had [REDACTED] of U.S. telecommunications revenue that it should have reported on Line 417, column (a) of its 2010 FCC Form 499-A (*see* criteria 12 and 13) and [REDACTED] of foreign and/or non-telecommunications revenue that it should have reported on Line 418.3 of its 2010 FCC Form 499-A (*see* criterion 14). IAD verified that the revenue IAD classified on Line 418.3 included foreign revenue totaling [REDACTED]. This amount agreed to the foreign revenue amounts in the Carrier's WRRs.

[REDACTED]

Cause

Moreover, the Carrier did not have a sufficient understanding of and incorrectly applied the Rules related to audio bridging revenues, thereby resulting in the Carrier reporting the revenues from the audio portion of its combined desktop and document sharing application and audio bridging product on the incorrect line, in its 2010 FCC Form 499-A.

Effect

The Carrier understated its universal service contribution base on its 2010 FCC Form 499-A by as detailed below:

2010 Form 499-A Line	Total Reported Amount	Interstate Amount Reported	International Amount Reported	Total Audited Amount	Interstate Amount Audited	International Amount Audited	Potential Effect on USF Contribution Base
417							
418.3							
Total Potential Effect on USF Contribution Base							

Recommendation

IAD recommends that the Carrier develop a process to accurately identify and report all of its U.S. telecommunications revenues on its FCC Form 499-A,

Any filings where similar misclassifications may have occurred should also be re-filed and the revenue reported on the appropriate lines, of the applicable FCC Form(s) 499-A.

Carrier's Response

WebEx Response to USAC Revenue Reclassification

WebEx objects to USAC's revenue reclassification. USAC incorrectly classified WebEx's service²⁹ as two distinct services rather than as a single

²⁹ The audit pertained to WebEx's Meeting Center family of services during the audit period. For the purposes of this memo, any reference to WebEx's service refers to the Meeting Center family of services during that period.

integrated information service. USAC's revenue reclassification impermissibly extended the Commission's *InterCall Order* by applying it to the audio components of WebEx's integrated information service. USAC compounded that error by imposing its allocation of telecommunications revenue rather than accepting WebEx's reasonable approach, despite the Commission's recognition that providers have "substantial latitude" when allocating revenue from services that include both telecommunications and information services.

Even if USAC's revenue reclassification were correct as a legal matter—which it is not—it requires USAC to exceed its carefully limited authority. USAC's conclusion that WebEx includes a separate and distinct telecommunications service requires it, at a minimum, to apply unclear Commission orders to new facts, and, even beyond that, to exercise authority that is reserved to the Commission, not to USAC. The FCC has never classified an integrated information service like WebEx's as telecommunications. The Commission has also not found a service like WebEx's to be an information service and then forcibly disaggregated the service to identify a regulated telecommunications component. USAC, however, has taken these steps. For these reasons, USAC should seek Commission guidance before seeking to reclassify WebEx's revenue.

1. USAC incorrectly treats WebEx's integrated information service as two separate and distinct services, including a discrete "audio bridging component."

USAC incorrectly concludes that WebEx offers two distinct services rather than a single, integrated information service. USAC's conclusion that WebEx is not a single integrated service, but rather two distinct services, is contrary to the Communications Act and Commission precedent and fails to take into account the written, audio, visual, and demonstrative evidence presented over the course of the audit.³⁰

- a. WebEx's audio bridging is not distinct and separate from its online collaboration service.

WebEx does not offer a distinct audio bridging service. Instead, as WebEx has demonstrated throughout this audit, it offers a single, integrated information service that enables users to generate, acquire,

³⁰ See WebEx Responses to USAC Outstanding Requests dated Aug. 31, 2011; Oct. 24, 2011; July 20, 2012; and Aug. 15, 2012; See Letter from Brita Strandberg, counsel for Cisco WebEx LLC (WebEx), to David Capozzi, USAC Acting General Counsel (Sept. 28, 2012) (*Sept. Letter*). On September 7, 2012, WebEx provided the members of the USAC audit team with a demonstrative presentation on the capabilities of the WebEx system and all components were integrated.

store, transform, process, retrieve, utilize, and make available information via telecommunications.³¹

The WebEx Meeting Center is a single, integrated service offered in a variety of ways to accommodate customer needs and demand. In particular, WebEx offers users a variety of options for both host licenses and for access minutes and permits purchasers to combine these products in a variety of ways. However, toll and toll-free access minutes – the products USAC seeks to treat as comprising a “separate and discrete” audio-bridging service – cannot be used on a stand-alone basis. Instead, the customer must purchase both a host license and toll or toll-free access minutes in order to use toll or toll-free minutes. If the customer does not have a host license, toll and toll-free minutes are not available for use. A product that is *unusable* without purchase of a companion service is not “separate and discrete” within the ordinary meaning of those terms.³²

The Communications Act confirms that WebEx toll and toll free minutes are not assessable telecommunications services. As explained above, these products do not enable a user to access a WebEx meeting session unless combined with another WebEx product. They, therefore, do not permit “transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”³³ Because these products cannot be used on a stand-alone basis to transmit information, they cannot be telecommunications services.

b. WebEx tightly integrates audio inputs.

USAC correctly recognized that WebEx offers an information service, agreeing that WebEx “provides the capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via the Carrier’s internet connection” and recognizing that WebEx’s “desktop and document sharing features enable customers to send messages to meeting participants, generate reports, download and transfer files, and white board during meetings.”³⁴ USAC erred, however,

³¹ *See id.*

³² Not only does WebEx not design, market, or sell audio bridging as a standalone service, but consumers do not pay WebEx’s above market rate for audio bridging for the sole purpose of conducting a standard teleconference. According to [REDACTED] in 2009 the average U.S. sales price for unattended toll-free audio conferencing was [REDACTED]. In contrast, WebEx’s average revenue per toll-free audio minute was [REDACTED]. Consumers pay this substantial price difference because WebEx fundamentally alters toll teleconferencing—otherwise consumers would purchase traditional teleconferencing at a lower price. The Report by [REDACTED] was provided to USAC on August 15, 2012.

³³ 47 U.S.C. § 153(50).

³⁴ Cisco WebEx LLC Filing Year 2010 Detailed Audit Finding: Reporting Period, Products, and Jurisdiction, sent via email October 17, 2012, pg. 8 (“USAC DAF”).

by disregarding the integration of audio into WebEx and attempting to treat WebEx toll and toll free access as separate and distinct services rather than as integrated components of WebEx.

Most notably, USAC incorrectly treated WebEx features such as active speaker and active talker as components of WebEx's online sharing, rather than as evidence of the integration of audio into the WebEx service.³⁵ Each of these features requires the integration of audio information into the WebEx online interface. Active speaker detects and visually identifies on the device screen who is speaking, while active talker integrates audio and video to detect who is speaking and prominently display that speaker's video feed on the device screen. As a technical matter, these features require integration of information derived from the audio and video inputs to the online meeting session, and cannot be treated as "separate and distinct" from the audio and video inputs that enable them.

Just as cable modem service combines transmission and the functionality of the domain name server to enable users to access web domains, WebEx servers combine information received over toll and toll free access connections with the functionality of WebEx servers to transform, process, and make available information, including information that is derived from the toll and toll free access connections. Because these connections are integral to the provision of WebEx's information service capabilities, WebEx's service is a single, integrated information service.

The Commission's *Pulver Order* confirms that the active speaker and active talker capabilities are not telecommunications. The Commission there examined Pulver's Free World Dialup ("FWD") service and explained that the FWD directory capability – which provided information to FWD users about the availability of other FWD users that is closely analogous to the speaker information made available by WebEx's active talker and active speaker features – did not provide "information of the user's choosing, without change in the form or content of the information as sent and received" and thus was not telecommunications.³⁶

USAC asserts that WebEx's service is not integrated because it "is possible for other meeting participants to use only the audio bridging portion of the WebEx platform collaboration service."³⁷ The *Cable Modem Order*, however, establishes that a service like WebEx is an information service "regardless of whether subscribers use all of the functions provided as part of the service, such as e-mail or web-hosting

³⁵ See *id.* at 9-10

³⁶ *Petition for Declaratory Ruling that Pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, FCC 04-27, 19 FCC Rcd. 3307, ¶ 6 (2004) ("*Pulver Order*") (quoting 47 U.S.C. § 153(50), which is incorrectly cited as 47 U.S.C. § 153(43) in the *Order*).

³⁷ USAC DAF at 9.

and regardless of whether every cable modem service provider offers each function that could be included in the service.”³⁸ The *Cable Modem Order*, therefore, confirms that WebEx service is an information service notwithstanding WebEx’s ability to accommodate participants that are away from their computers. USAC is not free to dismiss this holding in order to classify WebEx as telecommunications.

c. USAC Incorrectly Relies on WebEx’s Billing Practices Rather Than on WebEx’s Technical Capabilities.

USAC relies heavily on WebEx’s billing practices to support its erroneous conclusion that WebEx offers a distinct toll and toll free audio service.³⁹ But whether or not a service is an information service under the Communications Act depends on the technical “capability[ies]” of the service, not how the service is billed.⁴⁰ The fact that WebEx offers its customers a variety of means of purchasing WebEx does not alter the underlying technical and functional integration of the WebEx service. USAC, therefore, erred as both a factual and a legal matter by concluding that WebEx billing practices warrant treatment of WebEx toll and toll free minutes as services separate and distinct from WebEx.

2. USAC impermissibly rejected WebEx’s revenue allocation.

Even though WebEx’s service is an integrated information service, WebEx took a conservative approach to its revenue reporting in light of the *InterCall Order* and reported a portion of its revenue as telecommunications. WebEx’s allocation is grounded in the language of that order and well within the substantial latitude the Commission has granted to providers seeking to allocate revenue from services that arguably include telecommunications. USAC should, therefore, accept WebEx’s allocation as reasonable.⁴¹

WebEx offers a single integrated information service. As explained above, it does not offer a distinct and separate audio bridging service. It also does not offer a bundled service. It, nonetheless, did report telecommunications

³⁸ See *Sept. Letter*, at 4 (citation omitted). See also, WebEx Response to USAC “Applicable Criteria” at 3 (July 20, 2012).

³⁹ See USAC DAF at 8 (“The Carrier receives revenue from its customers for the customer’s use of the Carrier’s WebEx desktop and document sharing application, as well as revenue from customers that elect to use the Carrier’s audio bridging service for the audio component of the WebEx platform collaboration service. Based on IAD’s review of the Carrier’s documentation, the receipt of these two types of revenue is distinct in that the Carrier prices and bills them separately. Further, the Carrier records each of these two types of revenue in separate stock keeping units (SKUs) in its billing system.”)

⁴⁰ 47 U.S.C. § 153(24).

⁴¹ See *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act, as amended, 1998 Biennial Regulatory Review—Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access, and Local Exchange Markets*, Report and Order, FCC 01-98, 16 FCC Rcd. 7418 ¶¶ 49-54 (2001).

revenue, essentially treating its service as a *de facto* bundle and identifying an arguable telecommunications component in order to ensure that it was meeting its obligations under the *InterCall Order*. Thus, applying the language of the *InterCall Order*, WebEx devised a proxy for revenue attributable to customers' toll and toll free use of WebEx "without accessing" online features.

This *de facto* unbundling approach was reasonable and should have been accepted by USAC. The Commission's *Bundling Order* expressly acknowledges that providers may use alternative approaches to allocate bundled revenue and need not rely on the bundling safe harbors adopted by the Commission.⁴² The Commission recently reconfirmed this approach when it noted that "contributors [have] substantial latitude in how they apportion bundled revenues."⁴³ The Commission has not "addressed any specific factual situations that would provide more clarity on what alternative methodologies might be viewed as reasonable" and has not "adopted a bright-line rule."⁴⁴ Without seeking "more clarity," USAC cannot reject a reasonable approach grounded in the Commission's own precedents to unilaterally reallocate WebEx revenue.

3. USAC's conclusions exceed its limited authority under 47 CFR §54.702(c).

The Commission's rules provide that USAC "may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress."⁴⁵ The FCC has authorized USAC to conduct "audits of the beneficiaries of the Universal Service Fund, contributors to the Universal Service Fund, or any other providers of services under the universal service support mechanisms"⁴⁶ and has specifically prohibited USAC from conducting complex statutory interpretation.⁴⁷ In any situation where the statutes, regulations, or Commission precedents are ambiguous, USAC is required to seek Commission guidance.⁴⁸ USAC's findings repeatedly require USAC to exceed this carefully limited authority.

The Commission has never classified WebEx's service as a telecommunications service. USAC nonetheless takes this step. In order

⁴² See *Universal Service Contribution Methodology, A National Broadband Plan for Our Future*, Further Notice of Proposed Rulemaking, FCC 12-46, 27 FCC Rcd. 5357, 5401¶ 103 (2012).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ 47 C.F.R. § 54.702(c).

⁴⁶ 47 C.F.R. § 54.702(n).

⁴⁷ See 47 C.F.R. § 54.702(c) ("The Administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress.").

⁴⁸ See 47 C.F.R. § 54.702(c) ("The Administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission's rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.")

to do so, it treats WebEx as comprising two distinct services rather than as single service. We have explained above⁴⁹ why this is incorrect as a factual matter. As a legal matter and as both the Commission⁵⁰ and the Supreme Court⁵¹ have recognized, treating WebEx as two distinct services would require USAC to do more than apply clear provisions of the Commission's statutes, rules and orders. The *InterCall Order*, on which USAC chiefly relies, examined traditional audio bridging and concluded that it is telecommunications. It did not examine an information service and did not conclude that services like WebEx that are information services within the meaning of the statute and the Commission's *Cable Modem Order* must be disaggregated in order to permit USF contributions.⁵²

In reaching its conclusion, USAC attempts to rely on language in the *InterCall Order* that states that certain features of InterCall's service did not alter the fundamental character of the service because these separate capabilities were "part of a package in which the customer can still conduct its conference call with or without accessing these features."⁵³ But USAC cannot unilaterally apply this interpretation to WebEx because the Commission's *Cable Modem Order* directly contradicts this language. The *Cable Modem Order* holds that cable modem service is an integrated information service "regardless of whether subscribers use all of the functions provided as part of the service, such as e-mail or web-hosting, and regardless of whether every cable modem service provider offers each function that could be included in the service."⁵⁴

Even if USAC's determination that WebEx can be disaggregated into a telecommunications and an information service were correct, it again exceeded its authority by substituting its revenue allocation for WebEx's. The Commission has granted providers wide latitude in allocating revenues from bundled services. WebEx's allocation is reasonable and grounded in the Commission's precedents. USAC's rejection of that allocation rejects clear Commission rules permitting providers to use

⁴⁹ See Section I, *supra*.

⁵⁰ See *Regulation of Prepaid Calling Card Servs.*, Declaratory Ruling and Report and Order, FCC 06-79, 21 F.C.C. Rcd. 7290, 7295-96 ¶15 (2006) (Recognizing that it "may be difficult" to determine whether a service bundle is "'sufficiently integrated' to merit treatment as a single service.").

⁵¹ *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 991 (2005) (internal citations omitted).

⁵² *In re Federal-State Joint Board on Universal Service*, Report to Congress, 13 F.C.C. Rcd. 11501, 11524 ¶ 41 (1998).

⁵³ *Request for Review by InterCall, Inc. of Decision of Universal Service Administrator*, Order, FCC 08-160, 23 FCC Rcd. 10731, 10735 ¶ 13 (2008).

⁵⁴ *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, Internet Over Cable Declaratory Ruling, Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 02-77, 17 FCC Rcd 4798, 4822-23 ¶ 38 (2002).

reasonable methods to allocate revenues and again exceeds USAC's authority.

Conclusion

For the foregoing reasons, USAC should not reclassify WebEx's revenues and should instead seek Commission guidance on the appropriate classification WebEx service.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



USAC IAD's Response

IAD's Response to "WebEx Response to USAC Revenue Reclassification"

1. IAD does not concur that "USAC incorrectly treats WebEx's integrated information service as two separate and distinct services"

IAD does not concur with the Carrier's statement that "USAC's conclusion that WebEx is not a single integrated service, but rather two distinct services, is contrary to the Communications Act and Commission precedent and fails to take into account the written, audio, visual, and demonstrative evidence presented over the course of the audit."⁵⁷ During the course of the audit, IAD provided the Carrier multiple opportunities to provide evidence to support the Carrier's characterization of its WebEx platform collaboration product as a single integrated information service. IAD took into account all of the written, audio, visual, and demonstrative evidence received from the Carrier and used that information to determine whether IAD had sufficient, appropriate audit evidence to conclude, consistent with Commission precedent, that the Carrier provided, and its customer received, two separate and distinct services.⁵⁸

a. WebEx's audio bridging product is distinct and separate from its online desktop and document sharing application

The Carrier asserts that "WebEx's audio bridging is not distinct and separate from its online collaboration service."⁵⁹ Audio bridging services, as characterized by InterCall's Request for Review pleading, "employ a device – an audio bridge – that links multiple communications together and feeds to each station a composite audio input minus the user's own audio."⁶⁰ In its review of the facts presented by InterCall, the FCC found that "the service described by InterCall is telecommunications" because "InterCall's service allows end users to transmit a call (using telephone lines), to a point specified by the user (the conference bridge), without change in the form or content of the information as sent and received (voice transmission)" (*see* criterion 5). Similarly, because the Carrier's toll and toll free access minutes can only be transmitted via the PSTN (*i.e.*, using phone lines) to the conference bridge established by the Carrier and only a voice transmission is sent and received, pursuant to the FCC's *InterCall Order*, the audio portion of the Carrier's WebEx platform collaboration service is a telecommunications service. Therefore, IAD has determined that the Carrier's assertion that its WebEx's audio bridging product is not distinct and separate from its online collaboration service is not consistent with Commission precedent.

⁵⁷ See WebEx Response to USAC Revenue Reclassification at section 1.

⁵⁸ IAD concurs that WebEx provided the members of the USAC audit team with a demonstrative presentation on the capabilities of the WebEx system. However, as illustrated by this audit report, IAD does not concur that the WebEx system audio and data processing components were sufficiently integrated such that they constituted a single information service.

⁵⁹ See WebEx Response to USAC Revenue Reclassification at section 1a.

⁶⁰ See *InterCall Appeal* at 4.

The Carrier further asserts that its “toll and toll-free access minutes...cannot be used on a stand-alone basis. Instead, the customer must purchase both a host license and toll or toll-free access minutes in order to use toll or toll-free minutes.”⁶¹ The Carrier argues that these products do not enable a user to access a WebEx meeting session unless combined with another WebEx product.”⁶² While IAD concurs that a WebEx customer must purchase a host license before purchasing WebEx audio bridging minutes, a customer may use the toll and toll free access minutes on a stand-alone basis (*i.e.*, without accessing the WebEx desktop and document sharing application after initially scheduling a meeting), as described in the Carrier’s *2010 User Guide*.⁶³ As previously discussed,⁶⁴ a user can access a WebEx meeting session via the PSTN using only the call-in information provided in the WebEx meeting email invitation without using another WebEx product. In addition, the fact that the Carrier requires a customer to purchase an information service (*i.e.*, a host license) before the customer may purchase a telecommunications service (*i.e.*, an audio package or audio minutes) does not transform the two types of services into a single information service (*see* criteria 6 and 7). Rather, the Carrier offers basic voice-grade telephone service and “merely packages” it with the WebEx desktop and document sharing application, as contemplated in the FCC’s *Fourth Order on Reconsideration and Prepaid Calling Card Order* (*see* criteria 6 and 7).

- b. The Commission has rejected arguments like the Carrier’s assertion that “WebEx tightly integrates audio inputs” with its desktop and document sharing application⁶⁵

Lending support to IAD’s determination that the Carrier’s WebEx product does not tightly integrate audio inputs with online collaboration services, other telecommunications carriers and providers, including the Carrier in its comments in the Petition for Partial Reconsideration and Clarification of the *InterCall Order*,⁶⁶ raised similar arguments when asking the FCC to reconsider its findings in the *InterCall Order*. However, the FCC rejected the arguments made by these telecommunications carriers and providers in the *InterCall Reconsideration Order*.⁶⁷ Specifically, the FCC stated that “[Global Conference Partners (“GCP”)] has also requested that the Commission clarify whether certain additional services bundled with the audio bridging service, such as

⁶¹ See WebEx Response to USAC Revenue Reclassification at section 1a.

⁶² *Id.*

⁶³ See *2010 User Guide* at 101 (“If you do not need to share a presentation, document, or application with meeting attendees, you can set up an Audio Only meeting. As in any teleconference, your phone is the only means of communicating with attendees; no chatting or drawing on the whiteboard.”).

⁶⁴ See Condition section of this document at 13.

⁶⁵ See WebEx Response to USAC Revenue Reclassification at section 1b.

⁶⁶ See *In the Matter of Petition for Partial Reconsideration and Clarification of the InterCall Order of Global Conference Partners, Petition for Reconsideration of A+ Conferencing, Ltd., Free Conferencing Corporation, and The Conference Group*, CC Docket No. 96-45, Comments of Cisco System, Inc. at 6-8 (Sept. 8, 2008).

⁶⁷ See *In the Matter of Universal Service Contribution Methodology, Federal-State Joint Board on Universal Service, Petitions for Reconsideration and Clarification of the InterCall Order, Global Conference Partners, A+ Conference Ltd., Free Conferencing Corporation, and The Conference Group*, WC Docket No. 06-122, CC Docket No. 96-45, Order on Reconsideration, FCC 12-10, 27 FCC Rcd 898, 904, ¶ 13 (2012) (*InterCall Reconsideration Order*).

whiteboarding and other computer capabilities that may be used simultaneously with the voice teleconference, transform the service into an information service. We find that the additional services, as described by GCP, are not sufficiently integrated with audio conferencing services to be reasonably determined a single product. Consistent with the Commission's decision in the *Prepaid Calling Card Order*, we find that these separate capabilities are part of a package in which the customer can conduct its conference call with or without accessing these features. Accordingly, we confirm that under our existing requirements, a provider offering a bundled service comprised of telecommunications services and information services may not treat the entire bundled service as an information service for purposes of USF contribution assessment, but must instead apportion its end user revenues between telecommunications and non-telecommunications sources."⁶⁸

The Carrier argues that "[t]he Commission's *Pulver Order* confirms that the [Carrier's] active speaker and active talker capabilities are not telecommunications."⁶⁹ IAD concurs that the Carrier's active speaker and active talker services are not telecommunications services.⁷⁰ However, IAD does not concur that these features transform the audio component of the Carrier's WebEx platform collaboration service into a "single, integrated information service."⁷¹ The FCC has rejected the argument that "the holding in the *InterCall Order* conflicts with the *Pulver Order*."⁷² Specifically, the FCC stated that the argument was "without merit" and rejected the assertion that the *Pulver Order* found that "conference bridging capabilities are an information service under the Act."⁷³ In the *InterCall Reconsideration Order*, the FCC held that "the Free World Dialup [FWD] application at issue in *Pulver* was limited to members of the Free World Dialup community, required members to be on-line using a broadband connection, and did not allow for calls made or received on the public switched telephone network (PSTN)."⁷⁴ In contrast, the Carrier's WebEx audio bridging service does not require customers or meeting participants to be online using a broadband connection during WebEx meetings and does allow for calls made on the PSTN. Therefore, the audio component of the Carrier's WebEx platform collaboration service is distinct from the FWD application at issue in the *Pulver Order*. Moreover, the FCC specifically limited its decision in the *Pulver Order*, stating that "this declaratory ruling addresses FWD only to the extent it facilitates *free communications over the Internet* between one on-line FWD member *using a broadband connection* and other on-line FWD members *using a broadband connection*."⁷⁵ For the reasons previously stated and because the FCC specifically declined to extend its information service classification holdings to the legal status of FWD to the extent FWD was involved in any way in communications that originated or

⁶⁸ *Id.*

⁶⁹ See WebEx Response to USAC Revenue Reclassification at section 1b.

⁷⁰ See Condition section of this document at 12.

⁷¹ See WebEx Response to USAC Revenue Reclassification at section 1b.

⁷² See *InterCall Reconsideration Order* at ¶10.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *In the Matter of Petition for Declaratory Ruling that Pulver.Com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and Order, FCC 04-27, 19 FCC Rcd 3307, 3308, ¶ 2, n.3 (2004) (emphasis added).

terminated on the PSTN, or could be made via dial-up access,⁷⁶ the *Pulver Order* is not controlling for purposes of determining the treatment of the audio component of the Carrier's WebEx platform collaboration product.

- c. IAD does not concur with the Carrier's statement that, "USAC incorrectly relies on WebEx's Billing Practices Rather Than on WebEx's Technical Capabilities" to support IAD's conclusion that WebEx offers a distinct toll and toll free audio service

The Carrier asserts that USAC incorrectly relies on WebEx's billing practices rather than on WebEx's technical capabilities to support IAD's conclusion that WebEx offers a distinct toll and toll free audio service.⁷⁷ While IAD did take WebEx's billing practices into consideration when assessing whether the audio component and the desktop and document sharing component of the WebEx platform collaboration product were separate and distinct services, IAD did not rely primarily on the Carrier's billing practices to determine whether the Carrier accurately reported its telecommunication revenue on the 2010 FCC Form 499-A. Rather, as discussed above, IAD reviewed the functional and technical capabilities of the WebEx platform collaboration product, such as the requirement that a user access the PSTN in order to use the Carrier's toll and toll free minutes, to determine that WebEx offers a distinct toll and toll free audio service.

IAD evaluated the Carrier's billing practices to ensure that IAD classified only revenues related to the audio bridging portion of the Carrier's WebEx platform collaboration service as telecommunications revenue. [REDACTED]

[REDACTED] IAD was able to determine that it did not need to develop a methodology to unbundle the Carrier's telecommunications and information service revenues because IAD could use the unbundled telecommunications and information service revenue amounts recorded by the Carrier [REDACTED] to determine the revenue associated with each portion of the Carrier's WebEx platform collaboration service.

IAD reviewed the Carrier's request that IAD should use the "average sales price for US unattended [REDACTED] conferencing" of [REDACTED] calculated in a [REDACTED] [REDACTED] to unbundle the Carrier's telecommunications revenue. However, as previously discussed,⁷⁹ IAD determined that the Carrier's proposed alternate methodology was not compliant with the Rules for the same reason [REDACTED]

[REDACTED] Moreover, regarding the Carrier's statement that its consumers pay an above market rate (*i.e.*, a premium price) for the audio bridging component of the

⁷⁶ *Id.*

⁷⁷ See WebEx Response to USAC Revenue Reclassification at section 1c.

⁷⁹ See Condition section of this document at 15.

WebEx platform collaboration product because “WebEx fundamentally alters toll teleconferencing,” as previously discussed, IAD reviewed the Carrier’s WebEx platform collaboration product and determined that a customer receives two distinct services.⁸⁰ Namely, the customer receives the ability to place a telephone call using the WebEx audio bridging component of the service⁸¹ and the ability to utilize data processing applications using the desktop and document sharing component of the service.⁸² Moreover, a customer can use a telecommunications carrier or provider other than the Carrier to obtain the audio portion of the customer’s service.⁸³ There are a number of reasons (*e.g.*, convenience, receiving a single bill) that a customer might choose to pay a higher price for the Carrier’s audio service. However, charging a higher price does not fundamentally alter a standard toll teleconferencing service such that it is transformed into an information service.

2. IAD did not “[i]mpermissibly reject WebEx’s revenue allocation”

The Carrier asserts that “USAC impermissibly rejected WebEx’s revenue allocation.”⁸⁴ As previously discussed, IAD reviewed the Carrier’s revenue allocation and concluded that it was not compliant with the Commission’s Rules. Specifically, the Carrier’s revenue allocation only reported as telecommunications “revenue attributable to customers’ toll and toll free use of WebEx ‘without accessing’ online features.”⁸⁵ However, the *InterCall Order* states that whether a customer “conduct[s] its conference call with or without accessing these [online] features....in providing [its] audio bridging service,” the carrier is providing telecommunications services, not information services (*see* criterion 4). Thus, because the Carrier’s proposed revenue allocation excludes the audio portion of the revenue from certain customers that use both the audio bridging and desktop and document sharing portions of the Carrier’s WebEx platform collaboration service, it is not compliant with the Rules.

3. USAC has not exceeded “[i]ts limited authority under 47 CFR § 54.702(c)”

The Carrier asserts that “USAC’s conclusions exceed its limited authority.”⁸⁶ The Carrier further asserts that USAC is prohibited from “conducting complex statutory interpretation.”⁸⁷ The Carrier also argues that “the Commission has never classified

⁸⁰ See Condition section of this document at 13.

⁸¹ In other words, nothing about the audio bridging component of the Carrier’s WebEx platform collaboration service “acts on the format, content, code, protocol or similar aspects of the [customer’s] transmitted information or provide[s] the [customer] with additional, different, or restructured information, or involve[s] customer interaction with stored information” (this is done through the desktop and document sharing component of the Carrier’s WebEx platform collaboration service). *In the Matter of Amendment of Section 64.702 of the Commission’s Rules and Regulations (Second Computer Inquiry)*, 77 FCC 2d 384, 387 (1980). The audio component of the Carrier’s WebEx platform collaboration service provides the customer with nothing more than a “basic transmission service.” *Id.* at 420.

⁸² See Condition section of this document at 11.

⁸³ See Condition section of this document at 12.

⁸⁴ See WebEx Response to USAC Revenue Reclassification at section 2.

⁸⁵ *Id.*

⁸⁶ See WebEx Response to USAC Revenue Reclassification at section 3.

⁸⁷ *Id.*

WebEx's service as a telecommunications service," and, therefore USAC must "do more than apply clear provisions of the Commission's statutes, rules and orders" to reach its determination that the audio component and the desktop and document sharing component of the Carrier's WebEx platform collaboration service comprise two separate and distinct services.⁸⁸

FCC Rule (47 C.F.R. §) 54.702(c) states that "[t]he Administrator may not *make policy*, interpret *unclear* provisions of the statute or rules, or *interpret the intent of Congress*."⁸⁹ It is only where "the Act or the Commission's rules are *unclear*, or *do not address a particular situation*," that IAD must seek guidance from the Commission."⁹⁰ To help prevent and detect waste, fraud and abuse in the USF, USAC verifies through a number of methods, including in this case an audit of the information contained in the Carrier's 2010 FCC Form 499-A, any methodologies used to estimate or report the revenues on the form.⁹¹ IAD does not concur that the statute and rules are unclear as they pertain to the audio component of the Carrier's WebEx platform collaboration product. As part of conducting the audit of the Carrier's 2010 FCC Form 499-A, IAD reviewed the relevant Rules and applied them to the Carrier's WebEx services. For example, as previously stated, the Commission has held that when a "service allows end users to transmit a call (using telephone lines), to a point specified by the user (a conference bridge), without change in the form or content of the information as sent and received (voice transmission)," the service is a telecommunications service (*see* criterion 5). IAD's application of existing FCC precedent and regulations does not amount to IAD interpreting unclear provisions of the statute or rules. Nor does applying existing FCC precedent and regulations constitute making policy or interpreting the intent of Congress. Rather, IAD is applying established FCC decisions and regulations to the factual circumstances of this audit based on the documentation and information provided by the Carrier. Therefore, IAD did not exceed its authority in its role as the Administrator of the federal universal service program and it is not necessary for USAC to seek guidance from the FCC with respect to the findings in this audit.

Regarding the Carrier's statement that because the FCC has never classified WebEx's service as a telecommunications service, USAC must "do more" than apply clear provisions of the Commission's statutes, rules and orders to determine whether the audio and desktop and document sharing components of the Carrier's WebEx platform collaboration service comprise two separate and distinct services, IAD notes that it is reasonably possible that the factual circumstances associated with an FCC order promulgated in one case may not precisely fit the facts of a different case. Differing factual circumstances do not logically require that FCC Rules promulgated to address one set of circumstances can only be applied to those circumstances and not others. The language of the FCC orders concerning applicability controls how the order is used. Moreover, the Carrier's reliance on the *Brand X* decision and the *Prepaid Calling Order* for the proposition that whether an entity is providing a single information service or two

⁸⁸ *Id.*

⁸⁹ 47 C.F.R. § 54.702(c) (emphasis added).

⁹⁰ *Id.*

⁹¹ *See* 47 C.F.R. §§ 54.706(e), 54.707, 54.711(a).

distinct services, one of which is a telecommunications service, is misplaced.⁹² These decisions were issued in 2005 and 2006, respectively,⁹³ whereas the *InterCall Order* on which IAD relies, at least in part, in reaching its determinations regarding the appropriate treatment of the audio component of the Carrier's combined WebEx audio and online collaboration product, was issued in 2008 (*see* criteria 4 and 5). In addition, IAD notes that the conclusions it has reached based, at least in part, on the *InterCall Order* are consistent with the FCC's more recent *InterCall Reconsideration Order*.⁹⁴ Thus, IAD has reasonably applied the applicable FCC Rules to determine the proper reporting of the audio portion of the Carrier's WebEx platform collaboration revenues.⁹⁵ The FCC has not, nor could it, "classify" in the Rules every possible variant of a telecommunications service. Rather, the FCC has addressed broad service classifications and promulgated orders to assist telecommunications carriers, and USAC, to determine how particular telecommunications services should be reported on the FCC Form 499-A. The fact that IAD does not concur with the Carrier's interpretation of the FCC's rules does not mean that IAD is *de facto* interpreting unclear provisions of the Rules. It simply means that IAD and the Carrier do not agree as to the clarity and/or application of those Rules.

[REDACTED]

[REDACTED]

⁹² *See Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 991 (2005) (*Brand X Decision*); *In the Matter of Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling and Report and Order, FCC 06-79, 21 FCC Rcd 7290, 7295, ¶ 15 (2006).

⁹³ *Id.*

⁹⁴ *See supra* note 67.

⁹⁵ *Brand Ex Decision*, 545 U.S. at 991-992 ("As the Commission has candidly recognized, 'the question may not always be straightforward whether, on the one hand, an entity is providing a single information service with communications and computing components, or, on the other hand, is providing two distinct services, one of which is a telecommunications service. Because the term 'offer' can sometimes refer to a single, finished product and sometimes to the 'individual components in a package being offered'...the statute fails unambiguously to classify the telecommunications component of cable modem service as a distinct offering. *This leaves federal telecommunications policy in this technical and complex area to be set by the Commission....*") (internal citations omitted) (emphasis added).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2010 Form 499-A Line	Total Reported Amount	Interstate Amount Reported	International Amount Reported	Total Audited Amount	Interstate Amount Audited	International Amount Audited	Potential Effect on USF Contribution Base
417	[REDACTED]						[REDACTED]
418.3	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total Potential Effect on USF Contribution Base							[REDACTED]

USAC Management's Response

USAC management has reviewed the finding and, as discussed further below, concurs with USAC IAD that the Carrier's desktop and document sharing application and the Carrier's toll and toll free access minutes are not inextricably intertwined such that they create one single integrated information services product. Further, USAC management concurs that the Carrier's toll and toll free access minutes are telecommunications as defined by the Communications Act of 1934, as amended¹⁰² and that the revenues from the Carrier's toll and toll free access minutes should be reported on Line 417 of the 2010 FCC Form 499-A.

¹⁰² [REDACTED]
47 U.S.C. § 153(50).

The Carrier asserts that its audio minutes and its WebEx desktop and document sharing application are part of a single integrated information service.¹⁰³ The FCC has stated that information processing capabilities are inextricably intertwined with data transmission services only if a consumer always uses them as a unitary service.¹⁰⁴ The FCC further stated that a customer that receives an integrated information service expects to receive a finished, functionally integrated service.¹⁰⁵ Customers do not expect to receive (or pay for) two distinct services.¹⁰⁶ As described above, the Carrier's customers purchase and use host licenses and audio bridging minutes separately.¹⁰⁷ Although a WebEx customer can only purchase audio bridging minutes once the customer has purchased a host license, a customer may purchase and use a host license as a stand-alone product.¹⁰⁸ When purchased from the Carrier as a stand-alone product, the desktop and document sharing application portion of the WebEx service can be combined with an audio component provided by another carrier to create a collaboration meeting.¹⁰⁹ Thus, customers are not required to use the Carrier's desktop and document sharing application and the Carrier's audio bridging minutes as a unitary service. Further, even when a customer purchases and uses the Carrier's audio and desktop and document sharing components together, the customer does not receive a finished functionally integrated product. Rather, the customer receives two distinct products (voice and data) that must be accessed by participants through two different channels: (1) the customer accesses the desktop and document sharing application using the Internet by logging into the Carrier's Website;¹¹⁰ while (2) the customer accesses the audio bridging service using the PSTN by

¹⁰³ See WebEx Response to USAC Revenue Reclassification at section 1b.

¹⁰⁴ See *In the Matters of Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities, Universal Service Obligations of Broadband Providers, Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements, Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises, Consumer Protection in the Broadband Era*, CC Docket Nos. 02-33, 01-337, 95-20, 98-10, WC Docket Nos. 04-242, 05-271, Report and Order and Notice of Proposed Rulemaking, FCC 05-150, 20 FCC Rcd 14853, 14860, ¶ 9 (2005) (“The term ‘Internet access service’ refers to a service that always and necessarily combines computer processing, information provision, and computer interactivity with data transport, enabling end users to run a variety of applications such as e-mail, and access web pages and newsgroups. Wireline broadband Internet access service, like cable modem service, is a functionally integrated, finished service that inextricably intertwines information-processing capabilities with data transmission such that the consumer always uses them as a unitary service.”) (internal citations omitted).

¹⁰⁵ *Id.* at 14910-911, ¶ 104 (“Thus, whether a telecommunications service is being provided turns on what the entity is ‘offering...to the public,’ and customers’ understanding of that service. End users subscribing to wireline broadband Internet access service expect to receive (and pay for) a finished, functionally integrated service that provides access to the Internet. End users do not expect to receive (or pay for) two distinct services – both Internet access service and a distinct *transmission* service, for example. Thus, the transmission capability is part and parcel of, and integral to, the Internet access service capabilities.”) (emphasis added) (internal citations omitted).

¹⁰⁶ *Id.*

¹⁰⁷ See Condition section of this document at 10.

¹⁰⁸ See *2010 User Guide* at 63 (specifying that a meeting does not require a teleconference).

¹⁰⁹ See Condition section of this document at 12.

¹¹⁰ See *2010 User Guide* at 8.

dialing the toll or toll free number provided by the WebEx meeting host.¹¹¹ Thus, the services provided by the Carrier are equivalent to “one-stop” shopping, in that a customer may purchase both separately priced components from a single supplier.¹¹²

The Carrier has identified many features throughout the audit in support of its argument that WebEx toll and toll free access minutes are integrated components of the WebEx desktop and document sharing application. As previously discussed, USAC management concurs that all of the WebEx information services identified by the Carrier (including “Active Talker” and “Active Speaker”) are information services that are purchased with the host license and accessed using the Internet. A customer or participant does not have access to these information features if they choose to participate in the conference call without using the desktop and document sharing application component of the service. Further, even if all of the call participants, including the WebEx customer (*i.e.*, the host), are logged in and using the desktop and document sharing application, the host has the option to disable these features. The FCC has stated that a feature is not sufficiently integrated when a customer may still conduct a conference call with or without accessing that feature (*see* criterion 4). Because none of the features identified by the Carrier affect the fundamental character of the underlying voice transmission or are required to conduct a conference call, USAC management concurs with USAC IAD that the features identified by the Carrier are not sufficiently integrated to transform the audio bridging service provided by the Carrier into an information service.

The Carrier has drawn a comparison between its product and a cable modem service, stating that the *Cable Modem Order* establishes that a service like the WebEx platform collaboration service is an information service.¹¹³ USAC management does not concur with the Carrier’s analogy as applied to the audio bridging component of the Carrier’s WebEx platform collaboration service. The Carrier’s WebEx platform collaboration service is distinct from a cable modem service. The FCC has stated that cable modem services are information services provided “via telecommunications” (*see* criterion 9). In other words, cable modem service provides a customer with access to data processing services (*i.e.*, the Internet) and uses a telecommunications transmission to do so. In contrast, the Carrier’s customers do not use the audio component of the WebEx platform collaboration service to access the WebEx desktop and document sharing application; the WebEx audio component simply provides a customer with the ability to make or receive a phone call. With a cable modem service, the telecommunications component of the service is not separable from the data processing capabilities of the service (*see* criterion 9). To the customer, the telecommunications component is part and parcel of and integral to its data processing capabilities because without the telecommunications component, the customer is not able to access the data processing capabilities (*i.e.*, the Internet) in the

¹¹¹ *See 2010 User Guide* at 46-47.

¹¹² *See CPE Unbundling Order* at ¶15 (“We view bundling as the offering of two or more products or services at a single price, typically less than the sum of the separate prices. This is different from ‘one-stop’ shopping arrangements in which customers may purchase the components of a bundle, priced separately, from a single supplier.”).

¹¹³ *See WebEx Response to USAC Revenue Reclassification* at section 1b.

first instance (*see* criterion 9). Because these components are accessed separately and can be accessed on a stand-alone basis, they are not integral to one another.

Finally, the Carrier asserts that “USAC impermissibly rejected WebEx’s revenue allocation.”¹¹⁴ USAC IAD’s work has revealed that the revenue allocation method that the Carrier used to prepare the 2010 FCC Form 499-A was based on a determination that the Carrier’s desktop and document sharing application and audio bridging product were inextricably intertwined. USAC management concurs with USAC IAD that the methodology used by the Carrier for reporting its telecommunications versus non-telecommunications revenues was based on a methodology that excluded the revenue from the audio portion of the combined WebEx audio component and desktop and document sharing application. Therefore, the Carrier incorrectly reported a large portion of its audio bridging revenues as non-telecommunications on Line 418. USAC management also concurs with USAC IAD’s use of the billing data provided by the Carrier to identify actual telecommunication revenues from the Carrier’s toll and toll free minutes that should have been reported as telecommunications revenues on Line 417 of the 2010 FCC Form 499-A.

¹¹⁴ *See* WebEx Response to USAC Revenue Reclassification at section 2.



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Following is a summary of the findings discussed above and the estimated effect on the Carrier's USF contribution base.

[illegible]

This concludes the results of IAD's audit. Certain information may have been omitted from this report concerning communications with USAC management or other officials and/or details about internal operating processes or investigations. This report is intended solely for the use of USAC and the FCC and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of those procedures for their purposes.

This report is confidential and its distribution is limited pursuant to the requirements of 47 C.F.R. § 54.711(b).